



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND-053-FOR; Docket ID OSM-2012-0006]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). North Dakota proposes changes to the North Dakota Administrative Code to address letter of credit

provisions in the collateral bond rule under Administrative Code Section 69-5.2-12-04. The changes involve the financial information and notices that banks issuing a letter of credit must provide to the North Dakota Public Service Commission (hereinafter, the "Commission").

This document gives the times and locations that the North Dakota program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., m.d.t. [Insert date 30 days after date of publication in the Federal Register]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of publication in the Federal Register]. We will accept requests to speak until 4:00 p.m., m.d.t. on [Insert date 15 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following two methods:

Federal eRulemaking Portal: www.regulations.gov. This proposed

rule has been assigned Docket ID: OSM-2012-0006. If you would like to submit comments through the Federal eRulemaking Portal, go to www.regulations.gov and follow the instructions.

- Mail/Hand Delivery/Courier:
Jeffrey Fleischman, Director
Casper Field Office
Office of Surface Mining Reclamation and Enforcement
Dick Cheney Federal Building, POB 11018, 150 East B Street
Casper, Wyoming 82601-1018

For detailed instructions on submitting comments and additional information on the rulemaking process, see the "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at www.regulations.gov, you may review copies of the North Dakota program, this amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director

Casper Field Office

Office of Surface Mining Reclamation and Enforcement

Dick Cheney Federal Building, PO Box 11018, 150 East B Street

Casper, Wyoming 82601-1018

(307) 261-6555

jfleischman@osmre.gov

James Deutsch, Director

Reclamation Division

North Dakota Public Service Commission

600 East Boulevard, Dept. 408

Bismarck, North Dakota 58505-0480

(701) 328-2251

jdeutsch@nd.gov

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Telephone:

(307) 261-6555. Internet: jfleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the North Dakota Program
- II. Description of the Proposed Amendment

III. Public Comment Procedures

IV. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act...; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980 Federal Register (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15 and 934.30.

II. Description of the Proposed Amendment

By letter dated February 2, 2012, North Dakota sent us a proposed amendment to its program (Administrative Record Document ID No. OSM-2012-0006-0002) under SMCRA (30 U.S.C. 1201 et seq.). North Dakota sent the amendment to include changes made at its own initiative to the North Dakota Administrative Code (NDAC). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, North Dakota proposes to change letter of credit provisions in the collateral bond rule under NDAC 69-5.2-12-04. The financial information that banks issuing a letter of credit must provide to the Commission is specifically addressed. An option is being added to let banks provide a certified copy of financial reports that are required by a Federal agency rather than submit a balance sheet that is certified by a certified public accountant (CPA). Additionally, a change that affects the provision requiring banks to give the Commission notice of actions alleging insolvency or bankruptcy is also being proposed. North Dakota is proposing these changes both in order to be compliant with state and Federal banking regulations and to assist banks that could possibly have difficulty submitting CPA certified balance sheets.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent state or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments:

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment - including your personal identifying information - may be made publicly available in the electronic docket for this rulemaking at www.regulations.gov. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on [Insert date 15 days after date of publication in the Federal Register]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we

request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 7, 2012.

Allen D. Klein

Director, Western Region

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